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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

VIVIANA GREENE,

Plaintiff and Appellant,

v.

OFFICE OF ADMINISTRATIVE
HEARINGS,

Defendant and Respondent;

MARIN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION,

Real Party in Interest.

A153567

(Marin County
Super. Ct. No. CIV 1701907)

MEMORANDUM OPINION¹

This appeal is from the denial of an administrative mandamus petition by which Viviana Greene, having been denied retirement disability benefits by an administrative law judge (ALJ) in proceedings before the Marin County Employees' Retirement Association (MCERA), sought to attack the ALJ's decision on the ground of disqualifying bias. The Superior Court denied writ relief and Greene now appeals.

Greene's claim rests on the contention that the ALJ, one Kirk Miller, who was General Counsel of Kaiser Foundation Health Plan (Kaiser) from 1994 to 2003, was

¹ We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

biased against her due to his past relationship with Kaiser, improperly failed to disclose that relationship in the course of the administrative proceedings, and proceeded to decide the case despite being disqualified as a matter of law for his failure to respond to her disqualification demand as required by Code of Civil Procedure section 170.3, subd. (c)(3). She emphasizes that, as an attorney, ALJ Miller had a continuing duty of loyalty to Kaiser; that his denial of her claim was based, in material part, on medical records from Kaiser; and that her experts, whose testimony ALJ Miller discounted, opined that those records showed that Kaiser committed malpractice in treating Greene and diagnosing a concussion. ALJ Miller's continuing allegiance to Kaiser, Greene argues, is shown by the fact that he could not credit her experts without exposing his former client to malpractice exposure. We must not countenance this, Greene argues, because it would violate her due process rights to allow a biased judicial officer's decision against her to stand.

MCERA, for its part, points out that Kaiser was not a party to the administrative proceedings at issue and no claim was made against it in connection with that proceeding; no physicians from Kaiser testified in the MCERA proceeding; and Greene has not identified any financial interest of Kaiser in the ultimate determination of Greene's disability retirement application (other than her speculative contention that Kaiser might avoid a malpractice claim if her expert's reading of certain alleged patient complaints were accepted by ALJ Miller). Distilled to its essence, MCERA's response to Greene's claim of bias is that ALJ Miller weighed the evidence, was unpersuaded by Greene's experts, and believed the opposing experts instead. It takes the position that Greene is, in effect, arguing that ALJ Miller's alleged "bias" is shown by the fact he decided against her, and it contends that Greene does not come close to meeting the heavy burden of showing actual bias based on his 13-year-old employment relationship with a non-party.

We will affirm. The past representation by ALJ Miller of which Greene complains is not only wholly unconnected by subject matter of this disability retirement

case, but its relationship to this case is too attenuated and remote in time to create any credible basis for the claim of bias she now attempts to pursue. We agree with MCERA that (1) a reasonable person with knowledge of the facts would not doubt ALJ Miller's impartiality in the circumstances presented (see *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97), which disposes of Greene's bias argument both as a statutory matter and as a matter of due process (*People v. Freeman* (2010) 47 Cal.4th 993, 1006, fn. 4); (2) there was no reason for ALJ Miller to disclose his past relationship with Kaiser pursuant to canon 3E(2)(a) of the California Code of Judicial Ethics, because that rule only requires disclosure of "reasonably relevant" information; and (3) ALJ Miller was not required by Code of Civil Procedure section 170.3, subdivision (c)(4), to respond to Greene's disqualification demand, because Government Code section 11512, subdivision (c), not the Code of Civil Procedure, specifically governs the procedures under which disqualification challenges to ALJs must be handled.

DISPOSITION

Affirmed.

STREETER, J.

We concur:

POLLAK, P.J.

TUCHER, J.

A153567/Greene v. Office of Administrative Hearings